

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1278 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

MOHMADYASIR MUSTUFA JAMAL SAIYAD

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner
Mr.LR Pjari, AGP for Respondent No. 1, 2, 3

cor.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 30/04/97

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the detention order dated 28/01/1997 rendered by the respondent no.1 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985) (for short 'the PASA Act').

2. The grounds on which the impugned order of detention is passed have been annexed with the petition at Annexure-C. They inter-alia indicate that the petitioner has been carrying on criminal and anti-social activities of storing and supplying English liquor and one prohibition case of 1997 has been registered in Maninagar Police Station against the petitioner under the provisions of the Bombay Prohibition Act.

3. It has been recited that the petitioner's anti-social activities tend to obstruct the maintenance of public order and in support of the said conclusion statements of four witnesses have been relied upon.

4. The statements of the witnesses speak about the incidents of threatening and beating concerned witnesses by the petitioner with the aid of his associates and creating atmosphere of fear amongst the people collected there.

5. It is on the basis of the aforesaid cases and the incidents that the detaining authority has passed the impugned order of detention stamping the petitioner as 'boot-legger' under sec. 2(b) of the PASA Act.

6. I have heard the learned advocate for the petitioner and the Ld. A.G.P. for the State. It has been submitted that the petitioner has been involved in supplying large quantity of English liquor in respect of the offence registered in Maninagar Police Station. However, there are no overt acts in respect of this case which would suggest likelihood of disturbance of public order. The learned advocate for petitioner has challenged the impugned order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities, which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to a conclusion that the same would affect public order. Reliance has been placed on the decision of the Apex Court in the case of Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, C.P. reported in 1995 (2) G.L.R. p.1268. In that decision the Apex Court referred to two earlier decisions in the case of Arun Ghosh v. State of West Bengal reported in 1970 (1) SCC 98 and Piyush Kantilal Mehta v. Commissioner of Police, reported in 1989 Suppl. (1) SCC 322. In Piyush Kantilal Mehta's case (*supra*) it was made clear that merely because a detenu was a

boot-legger within the meaning of sec. 2(b) of the PASA Act he could not have been preventively detained on that basis. The emphasis was with respect to whether his activities as a boot-legger would adversely affect the maintenance of public order.

7. In reply, learned A.G.P. has made reference to an earlier decision of the Supreme Court in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi v. State of Maharashtra & anr. reported in AIR 1992 SC 979.

8. In my opinion, Mustakmiya's case (*supra*) would apply to the facts of this case particularly since this is essentially a case of individual incidents dealing with law and order. Hence, following order is passed :-

"The impugned order of detention is hereby quashed and set aside. The petitioner - detenu Mahmadyasir Mustufa Jamal Saiyad shall be forthwith set at liberty, if he is not required to be detained in any other case. Rule made absolute accordingly."

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